

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK JAMES TAYLOR,

No. C 08-04776 CW (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

CALIFORNIA DEPARTMENT OF JUSTICE,
et al.,

Defendants.

Plaintiff is a prisoner of the State of California who is incarcerated at Pleasant Valley State Prison. He has filed a pro se petition for a writ of mandamus. He has also filed an application for in forma pauperis status.

BACKGROUND

On November 20, 1997, Plaintiff was sentenced to nineteen years to life in prison for second degree murder with the use of a firearm. He contends that a writ of mandamus is the proper vehicle by which to compel Defendants, specifically the "Department of Justice and the Hayward Police Department (Investigating Agency in Case Number H22782)," to "provide Petitioner with all evidence obtained in the investigation of said case." (Pet. for Writ of Mandamus at 1 (emphasis in original).) Plaintiff claims that Defendants' failure to "provide [him] with all the evidence obtained in the investigation of Case No. H22782 violates [his] right of access to said information pursuant to the California Public Records Act, and . . . the First Amendment right to receive

1 information and the Due Process Clauses to both the state and
2 federal constitutions." (Id. at 6.)

3 DISCUSSION

4 I. Standard

5 Federal courts must engage in a preliminary screening of cases
6 in which prisoners seek redress from a governmental entity or
7 officer or employee of a governmental entity. 28 U.S.C.
8 § 1915A(a). The Court must identify cognizable claims or dismiss
9 the complaint, or any portion of the complaint, if the complaint
10 "is frivolous, malicious, or fails to state a claim upon which
11 relief may be granted," or "seeks monetary relief from a defendant
12 who is immune from such relief." Id. § 1915A(b). However, pro se
13 pleadings must be liberally construed. Balistreri v. Pacifica
14 Police Dep't, 901 F.2d, 696 699 (9th Cir. 1990).

15 II. Writ of Mandamus

16 The federal mandamus statute provides: "The district courts
17 shall have original jurisdiction of any action in the nature of
18 mandamus to compel an officer or employee of the United States or
19 any agency thereof to perform a duty owed to the plaintiff." 28
20 U.S.C. § 1361. Mandamus relief is an extraordinary remedy,
21 however. It is available to compel a federal officer to perform a
22 duty only if: (1) the plaintiff's claim is clear and certain;
23 (2) the duty of the officer is ministerial and so plainly
24 prescribed as to be free from doubt; and (3) no other adequate
25 remedy is available. See Fallini v. Hodel, 783 F.2d 1343, 1345
26 (9th Cir. 1986).

27 The Court has no authority to take the actions requested by
28 Plaintiff against Defendants, who are state actors, by way of a

writ of mandamus. Federal courts are without power to issue mandamus to direct state courts, state judicial officers, or other state officials in the performance of their duties. A petition for mandamus to compel a state court or official to take or refrain from some action is frivolous as a matter of law. See Demos v. U.S. District Court, 925 F.2d 1160, 1161-62 (9th Cir.), cert. denied, 498 U.S. 1123 (1991); see also In re Campbell, 264 F.3d 730, 731-32 (7th Cir. 2001) (denying petition for writ of mandamus that would order state trial court to give plaintiff access to certain trial transcripts which he sought in preparation for filing state post-conviction petition; federal court may not, as a general rule, issue mandamus to a state judicial officer to control or interfere with state court litigation). Plaintiff's mandamus remedy, if any, lies in state court.

CONCLUSION

For the foregoing reasons,

1. Plaintiff's petition for a writ of mandamus is DISMISSED for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915A.

2. Plaintiff's application for in forma pauperis status is GRANTED.

3. The Clerk of the Court shall issue a judgment in accordance with this Order and close the file.

4. This Order terminates Docket no. 4.

IT IS SO ORDERED.

Dated: 6/23/09



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARK JAMES TAYLOR,

Plaintiff,

v.

COURT OF APPEAL et al,

Defendant.

Case Number: CV08-04776 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 23, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mark James Taylor K76265
CSP-Pleasant Valley State Prison
P.O. Box 8502
Coalinga, CA 93210

Dated: June 23, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California